



STATE OF HAWAII
DEPARTMENT OF TAXATION

P.O. BOX 259
HONOLULU, HAWAII 96809-0259

November 10, 1993

TAX INFORMATION RELEASE No. 93-4

RE: Application of Section 237-24.3(1)(C), Hawaii Revised Statutes (HRS)
(formerly Section 237-24(18)(C), HRS)

The purpose of this Tax Information Release (TIR) is to notify taxpayers that Section 237-24.3(1)(C), HRS, excluding from the general excise tax the sales of locally grown, raised, or caught agricultural, meat, or fish to a person or common carrier engaged in interstate or foreign commerce for consumption outside Hawaii by such persons or common carrier is unconstitutional and no longer available.

The general excise tax exemption for qualifying sales of fresh food products under Section 237-29.5, HRS, relating to the exemption of the sale of tangible personal property shipped out of the State may continue to be claimed.

Section 237-24.3(1)(C), HRS, (which will no longer be followed) relating to additional amounts not taxable, excludes from the imposition of the general excise tax, "(C) Agricultural, meat, or fish products grown, raised, or caught in Hawaii, when such sales are made to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state by such person, crew, or passengers on such shipper's vessels or airplanes;"

The Department will follow the decision reached in In the Matter of the Tax Appeal of Hawaiian Flour Mills, Inc., Tax Appeal Court Case No. 2749, decided March 31, 1993, under appeal on other issues. The Tax Appeal Court determined that the general excise tax exclusion for locally grown, raised, or caught agricultural, meat, or fish products for consumption out-of-state, as set forth in Section 237-24.3(1)(C), HRS, is unconstitutional under Article I, Section 8, clause 3, of the United States Constitution (the Commerce Clause). The Court found that appellant Hawaiian Flour Mills, Inc. was entitled to the exemption from the general excise tax on its sales of fresh food products to be consumed out-of-State by persons engaged in interstate or foreign commerce, whether or not the fresh food products were locally grown, raised, or caught. The tax exemption did not apply to processed or frozen food products.


RICHARD F. KAHLE, JR.
Director of Taxation

Sections explained: Section 237-24.3, HRS and Section 237-29.5, HRS